

(2) 7

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA . . .

MOSER

v.

Kyle

116 OTHER DEFENDANTS, ET AL.	MARY E. D'ANDREA, CLERK
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JURY TRIAL REQUESTED

Deputy Clerk

FILED

HARRISBURG, PA

3:2000-1846

NOV 29 2000

* MOTION FOR APPOINTMENT OF COUNSEL *

Plaintiff, JEFFERY PAUL MOSER, Pursuant to § 1915, REQUEST THIS COURT TO APPOINT COUNSEL TO REPRESENT HIM IN THIS CASE FOR THE FOLLOWING REASON:

- 1.) THE PLAINTIFF IS UNABLE TO AFFORD COUNSEL!
- 2.) THE ISSUE INVOLVED IN THIS CASE ARE COMPLEX.
- 3.) THE PLAINTIFF HAS LIMIT ACCESS TO "LEGAL COPIES,"
LEGAL MAILING AT SCI-HUNTINGDON AS AN INDEBTED
INMATE, (NOTHING IS AFFORDED FREE.)
- 4.) THE PLAINTIFF IS IN FACT "A.D.A. STANDARD" DISABLED
AND MEDICALLY UNABLE LITIGATE AND RECEIVE JUSTICE
WITHOUT COUNSEL.
- 5.) PLAINTIFF, IS DEEMED "MEDICALLY DISABLED ALSO AS A
RESULT OF MENTAL DISABILITIES" BI-POLAR (FEDERAL
MEDICAL CENTER) AND UNABLE TO LITIGATE...
- 6.) THE PLAINTIFF HAS A "VERY" LIMITED KNOWLEDGE OF
THE LAW.

PURSUANT 28 U.S.C. 1746.

RESPECTFULLY,
Jeffery Moser (Plaintiff)

PREPARED WITH ASSISTANCE OF:
 P.L.M / WAYNE SPENCER WITH

27 NOV. 2000

IN THE UNITED STATES DISTRICT COURT, MIDDLE DISTRICT
OF PENNSYLVANIA . . .

JEFFERY MOSER

v.

KENNETH KYLER,

116 OTHER DEFENDANT sq. ETPL

FILED
HARRISBURG, PA

NOV 29 2000

Nov 31 CV00-1846

MARY E. D'ANDREA, CLERK
Deputy Clerk

Jury Trial Requested

* MEMORANDUM IN SUPPORT OF THE PLAINTIFF
MOTION FOR APPOINTMENT OF COUNSEL . . . *

THIS IS A CIVIL RIGHTS CASE FILED UNDER (42 U.S.C. 1983) BY A STATE PRISONER AND ASSERTS CLAIMS OF UNCONSTITUTIONAL MISUSE OF POWER THE DENIAL OF DUE PROCESS AND THE DENIAL OF MEDICAL CARE AS A RETALIATORY TACTIC AND/OR COST SAVING MEASURE . . .

(STATEMENT OF FACTS, EN BREF)

THE COMPLAINT ALLEGES THAT THE PLAINTIFF, IS BEING DENIED PROPER (OR ANY MEDICAL TREATMENT IN SOME CASES, FOR HIS SPINAL INJURY TERMINAL ILLNESS (HEP. C.), THROAT CONDITION (POSSIBLE CANCER), AS WELL AS A.D.A. VIOLATIONS, (AMERICANS WITH DISABILITIES)

ON JULY 7TH, 1999 THE PENNSYLVANIA D.O.C. TOOK CUSTODY OF THE PLAINTIFF, FULLY KNOWING HE WAS IN NEED OF IMMEDIATE MEDICAL ATTENTION AND WAS MADE AWARE THAT THE PLAINTIFF CAME FROM A "FEDERAL HOSPITAL" (F.M.C. Ft. WORTH) INTO THERE CUSTODY WITH IMMEDIATE MEDICAL NEEDS (E.G. SPINAL FUSION OPERATIONS, NARCOTIC PAIN MANAGEMENT, A.D.A. STANDARD OF LIVING FOR THE DISABLED, POSSIBLE THROAT CANCER AND LATER NOTED HIS TERMINAL ILLNESS (HEP. C.) LIVER DISEASE. SINCE THAT RECEPTION, THE PLAINTIFF HAS TRIED TO OBTAIN SAID "MEDICAL TREATMENTS," "NEEDS," "MEDICATION" ORDERED BY OUTSIDE SPECIALIST (NURO-SURGEON(S), M.R.I., PROOF IN TESTINGS) AND FEDERAL MEDICAL CENTER DOCTORS AND STAFF. TO NO AVAIL THE PLAINTIFF

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(1)

SUFFER'S GREATLY AND BELIEVES "WITHOUT COURT INTERVENTION" THE ACTIONS OF THE DEFENDANTS WILL COST THE PLAINTIFF IRREPARABLE HARM AND/OR THE PLAINTIFF LIFE. SINCE THE RECEPTION THE PLAINTIFF HAS TRIED TO URGENTLY THIS MATTER IN AN EFFORT TO RECEIVE ASSISTANCE IN MEDICAL ATTENTIONS, NEEDS, TO STOP ANY FURTHER IRREPARABLE HARM, AND/OR DEATH, BUT HAS ONLY BEEN MEANT WITH REFUSAL TO PROCESS THE PLAINTIFF GRIEVANCE AND/OR ADDRESS PLAINTIFF GRIEVANCE, -- AS A RESULT OF THIS LITIGATION THE PLAINTIFF HAS BECOME A "TARGET OF RETALIATION AND DELIBERATE INDIFFERENCE" IN ALL MANIFESTS OF PRISON LIVING, AS WELL THE PLAINTIFF ~~DOES~~ SUFFERS DISCRIMINATION GREATLY BECAUSE OF DISABILITIES AND ASKING FOR A.D.A. SERVICES AND MEDICAL NEEDS DUE TO THOSE DISABILITIES. THE PLAINTIFF, TO DATE SUFFERS FROM MEDICAL NEGLECT, DELIBERATE INDIFFERENCE & A.D.A. VIOLATIONS OF DISCRIMINATION.

* THE COURT SHOULD APPOINT COUNSEL FOR THE PLAINTIFF: IN DECIDING WHETHER TO APPOINT COUNSEL FOR AN INDIGENT LITIGANT THE COURT SHOULD CONSIDER "THE FACTUAL COMPLEXITY OF THE CASE", THE ABILITY OF THE INDIGENT TO INVESTIGATE THE FACTS, THE EXISTENCE OF COMPLEX AND/OR CONFLICTING TESTIMONY, "THE ABILITY OF THE INDIGENT TO PRESENT HIS CLAIM AND THE COMPLEXITY OF THE LEGAL ISSUES" (ABDULLAH V. GUNTER, 949 F.2d 1032 (8TH CIR. 1991) (112 S.C. 1992)) IN ADDITION, COURTS HAVE SUGGESTED THAT THE MOST IMPORTANT FACTOR IS WHETHER THE CASE APPEARS TO HAVE MERIT (COOPER V. U.S. SARGENT CO. ENC-111 877 F.2d 170, 173 (2ND CIR. 1989)) " EACH OF THOSE FACTORS WEIGHTS IN FAVOR OF APPOINTING COUNSEL IN THIS CASE". THE PLAINTIFF ALSO BELIEVE "EMINENT DANGER ISSUES" SHOULD AS WELL BE CONSIDERED.

1.) FACTUAL COMPLEXITY: THE Plaintiff ALLEGES THAT, HE SUFFERS FROM MEDICAL NEGLECT & DELIBERATE INDIFERENCE WHICH IN FACT IS A DIRECT THREAT TO HIS HEALTH, SAFETY & LIFE. HE CHALLENGES THE DENIAL OF MEDICAL CARE, THE SHEER NUMBER OF CLAIMS AND DEFENDANTS MAKES THIS A "FACTUAL COMPLEX CASE". IN ADDITION, ONE OF THE Plaintiff CLAIMS INVOLVES THE DENIAL OF MEDICAL CARE; IT WILL PROBABLY BE ~~NECESSARY~~ NECESSARY TO PRESENT A MEDICAL EXPERT WITNESS (OR) TO CROSS EXAMINE MEDICAL WITNESSES CALLED BY THE DEFENDANTS, OR BOTH. THE PRESENCE OF MEDICAL (OR) OTHER ISSUE'S REQUIRING EXPERT TESTIMONY SUPPORTS THE APPOINTMENT OF COUNSEL. (MOORE VS. MARCUS, 976 F.2d 268, 272 (5TH CIR. 1992); (JACKSON VS. COUNTY OF MCLEAN, 953 F.2d 1070, 1073 (7TH CIR. 1992); (TUCKER VS. RANDALL, 948 F.2d 388, 392, (7TH CIR. 1991))...)

2.) THE Plaintiff ABILITY TO INVESTIGATE: THE Plaintiff IS DISABLED AND WITHOUT EFFECTIVE PAIN MANAGEMENT AND/OR MEDICAL TREATMENT, HE IS EXTREMELY LIMITED ON WHAT HE IS ABLE TO DO, (BECAUSE HE CAN ONLY SIT AND STAND FOR SHORT PERIOD OF TIME, AND SUFFER FROM INCONTINENCE WHICH CAUSES HIM TO "URINATE (OR) DEFECATE" ON HIMSELF FROM TIME TO TIME, AS OF A RESULT OF NERVE DAMAGE, SO THE Plaintiff HAS NO ABILITY TO INVESTIGATE THE FACTS, (WITHOUT HIS DISABILITIES HINDERING HIM GREATLY, FOR EXAMPLE: IT WAS A TOTAL EMBARRASSMENT TO THE Plaintiff, WHEN HE "DEFECATED ON HIMSELF" IN FRONT OF HUNDREDS OF INMATES, (GUARDS ON 11-1-2000 (REPORT BY Dawn Mills Pa-L.) But yet RECEIVED NO MEDICAL ASSISTANCE TO PRESERVE DIGNITY AS A DISABLE HUMAN BEING (A.D.A.)... A FACTOR ALSO THAT SEVERAL COURTS HAVE CITED IN CASES THAT WILL REQUIRE CONSIDERABLE "DISCOVERY" CONCERNING WITNESSES, AND THE Plaintiff MEDICAL HISTORY, THE DEFENDANT RECORDS & HISTORY, SUPPORT Plaintiff REQUEST FOR ~~COURT~~ (TUCKER VS. Dickey, 613 F. Supp. 1124, 1133-34 (W.D.WIS. 1985) (NEED FOR DISCOVERY SUPPORTED APPOINTMENT OF COUNSEL).

3.) Conflicting Testimony: THE Plaintiff Account of Incidents of Medical Indifference, Retaliation and A.D.A. Discrimination, ARE ASPECT THAT WILL PROBABLY BE "CREDIBILITY CONTESTED" BETWEEN THE Defendants AND THE Plaintiff. THE EXISTENCE OF THESE "CREDIBILITY" ISSUE'S SUPPORTS APPOINTMENT OF COUNSEL. (Gatson vs. Coulier, 679 F.Supp. 270, 273 (W.D.N.Y. 1988)).

4.) THE ABILITY OF THE INDIGENT TO PRESENT HIS CLAIM: (THE PLAINTIFF IS AN INDIGENT PRISONER WITH "NO LEGAL" TRAINING, ^{SL}.) IN ADDITION THE PLAINTIFF IS "LEGALLY DISABLED" AND NOT ABLE TO PHYSICALLY DO THE LITIGATION, AND IS DENIED "DEBIT LEGAL COPIES" MAILING AT SCC-HUNTINGDON, BECAUSE HE IS INDIGENT AND THIS IS A TACTIC THE DEFENDANT USE TO STOP THE PLAINTIFF ACCESS TO THE COURTS AND LITIGATION. A FACTOR THAT SUPPORTS APPOINTMENT OF COUNSEL. (Whisenant v. Yunn, 739 F.2d 160, 163 (4th Cir. 1984))

5.) LEGAL COMPLEXITY: THE LARGE NUMBER OF DEFENDANTS, SOME WHOM ARE SUPERVISORY OFFICIAL, OUTSIDE DOCTORS AND PRISON OFFICIALS NOT LOCATED AT SCC-HUNTINGDON, FOR DISCOVERY, DEPOSITIONS, PRESENTS COMPLEX LEGAL ISSUE'S OF DETERMINING WHICH DEFENDANTS WERE SUFFICIENTLY PERSONALLY INVOLVED IN THE CONSTITUTIONAL VIOLATION TO BE HELD LIABLE. IN ADDITION, THE PLAINTIFF HAS ASKED FOR A "JURY TRIAL", WHICH REQUIRES MUCH GREATER LEGAL SKILL THAN THE PLAINTIFF HAS (OR CAN DEVELOP) (Abdullah vs. Gunster, 949 F.2d 1032, 1036, (8th Cir. 1991) (CITING JURY TRIAL DEMAND AS A FACTOR SUPPORTING APPOINTMENT OF COUNSEL))

- (CONTINUED) CLOSING -

MERIT OF THE CASE: THE PLAINTIFF'S ALLEGATIONS, IF PROVEN, CLEARLY WOULD ESTABLISH A CONSTITUTIONAL VIOLATION. THE ALLEGATION OF DENIAL OF MEDICAL CARE AMOUNTS TO "INTENTIONALLY INTERFERING WITH THE TREATMENT ONCE PRESCRIBED," WHICH THE SUPREME COURT HAS SPECIFICALLY CITED AS AN EXAMPLE OF UNCONSTITUTIONAL DELIBERATE INDIFFERENCE TO PRISONER'S MEDICAL NEEDS, (ESTELLE VS. GAMBELLE, 429 U.S. 97, 105, 97 S. CT. 285 (1976) / JONES VS. US, 91 F.3d 623 (3rd Cir.) (DENIAL OF NEEDED MEDICAL TREATMENT CONST. VIOLATION)) RHOADES VS. CHAPMAN, 452 US 337, 69 LEVAD 59, 101 S. CT. 2392 (1981) (PRACTICES THAT INVOLVE UNNECESSARY AND UNRESTRICTED INFILCTION OF PAIN ARE PROHIBITED) IN ADDITION, VIOLATION ALLEGED BY PLAINTIFF OF (A.D.A. VIOLATION) IF PROVEN, CLEARLY WOULD ESTABLISH A CONSTITUTIONAL VIOLATION ALSO. (PENNSYLVANIA D.O.C. VS. YESKEY 118 S. CT. 1952 (1998) (ARMSTRONG VS. WILSON, 124 F.3d 1019 (9th Cir. 1997) (PAIN TEXT OF TITLE II OF AMERICANS WITH DISABILITIES ACT UNAMBIGUOUSLY EXTENDS TO STATE PRISON INMATES))... ON IT'S FACE, THEN, THIS IS A MERITORIOUS CASE...

FOR THE FOREGOING REASONS, THE COURT SHOULD "GRANT" THE PLAINTIFF MOTION AND APPOINT COUNSEL IN THIS CASE...

Respectfully Submitted

SWORN PURSUANT 28 U.S.C. 1746.

Jeffrey Paul Noser (Plaintiff)
27 NOV. 2000

PREPARED WITH ASSISTANCE OF:

P.L.M / WAYNE SPENCER W/H:

513-110

NSN 7540

MEDICAL RECORD

CONSULTATION SHEET

TO:

Psychiatry

REQUEST

FROM: (Requesting Physician) M.D.
Medical OfficerDATE OF REQUEST
12/1/98

REASON FOR REQUEST (Complaints and findings)

Very hypomanic

Being evaluated for C.L.B.P.
90% inability to sleep.

Please evaluate

PROVISIONAL DIAGNOSIS

C.L.B.P., Drug dependence R, Personality disorder

DOCTOR'S SIGNATURE
S. Kwatra, M.D.
Medical Officer

Walter

APPROVED

SK

PLACE OF CONSULTATION

 BEDSIDE ON CALL ROUTINE TODAY
 72 HOURS EMERGENCYRECORD REVIEWED YES NO

CONSULTATION REPORT

PATIENT EXAMINED YES NO

Pt is a 33 year old MWMZ Zentilow from Nevada.

Pt serving 6 more mos for BANK FRAUD. 2nd incarceration.

Pt paranoid of you + others voices calling his name.

Pt has marked difficulty to sleep + anxiety. This has been present for ~5 yrs when placed in PONITENTIARY.

PMH - BACK INJURY, NIDDM

Socially - INDIA - uses AMPHETAMINES, DRINK HEAVILY (BLACKOUTS) + ABUSED MARIJUANA
SMOKES IPPD

Family Hx - Mother = PARANOIA

See DICTATION

IMP- Axis I: BIPOLAR DISORDER TYPE II

S. Kwatra, M.D.
Medical Officer

12/15/98

P - DEPAKOTE 250MG po BID x 1 WEEK, THEN 250MG QAM, 500MG QHS

LIVER FUNCTIONS + DEPAKOTE IN 3 WKS
LOVEL

F/U in 4 WKS

SIGNATURE AND TITLE

(Continue on reverse side)

IDENTIFICATION NO.

ORGANIZATION

REGISTER NO.

DATE

12/15/98

WARD NO.

PATIENT'S IDENTIFICATION (For typed or written entries give: Name—last, first, middle; grade; rank; rate; hospital or medical facility)

Mosier Jeffery

32560-048

D.O.B. 6/10/65

FEDERAL MEDICAL CENTER
3150 HORTON ROAD
FT WORTH, TX 76119

CONSULTATION SHEET

Medical Record

STANDARD FORM 513 (REV. 8-92)
Prescribed by GSA/ICMR, FIRMR (41 CFR) 2

★ U.S. GOVERNMENT PRINTING OFFICE 199

THE UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF PENNSYLVANIA

MOSER

vs.

KYLER

1:00-CV-01846

- Certificate of Service -

I, JEFFERY PAUL MOSER, (Plaintiff) hereby certify that I served a "true & correct" copy of the following:

- 1.) MOTION FOR APPOINTMENT OF COUNSEL
- 2.) BRIEF IN SUPPORT OF APPOINTMENT OF COUNSEL
- 3.) FORM PAUPERIS FORM & AUTHORIZATION, (ORDER OF 14 NOV. 2000)

which is deemed FILED, at the time it is delivered to the prison authorities for forwarding, (via: Inst. mail box) --
(Houston vs. Lack, 101 L-ED 245 (1988), by placing same in a sealed, postage paid envelope too:

* UNITED STATES DISTRICT COURT

228 WALNUT ST

P.O. BOX 983

HARRISBURG, PA. 17108

(certified mail no# as follows:

(7099 3400 0015 4381 4598)

I, declare, under the "Penalty of Perjury" (28 U.S.C. 1746)
that the forgoing is "true & correct",
(deposited same in the U.S. mail box at: SCC - HUNTINGDON)

DATED THIS 28th DAY OF NOV. 2000,

SWORN TO: JEFFERY PAUL MOSER RE4713

ASSISTANCE/wit: WAYNE SPENCER.

1100 PIKE ST
HUNTINGDON PA. 16654